IN RE JUVENILE APPEAL

189 Conn. 276 (1983) | Cited 67 times | Supreme Court of Connecticut | February 15, 1983

This is an appeal by the defendant, motherof five children, from the order of the SuperiorCourt for juvenile matters granting temporary

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custody of her children to the plaintiffcommissioner of the department of children andyouth services.

The defendant and her six children lived in asmall apartment in New Haven. They had beenreceiving services from the department of childrenand youth services (hereinafter DCYS) as a protectiveservice family[1] since 1976, and were supportedby the Aid to Families with DependentChildren program.[2] Michelle Spicknall, a DCYScaseworker, was assigned to the defendant's casein January, 1979. In the next nine months she visitedthe defendant's home twenty-seven times. Sheconsidered the family situation "marginal," butnoted that the children were "not abused [or]neglected." It was Spicknall's opinion that thechildren were very happy and active, and that theyhad a "very warm" relationship with their mother.

During the night of September 4-5, 1979, thedefendant's youngest child, nine month old Christopher,died. The child was brought by ambulanceto Yale-New Haven Medical Center where resuscitationwas unsuccessfully attempted by his pediatrician,Robert Murphy. No cause of death could bedetermined at that time, but the pediatriciannoticed some unexplained superficial marks onChristopher's body.

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Because of Christopher's unexplained death, theplaintiff commissioner of children and youth servicesseized custody of the defendant's fiveremaining children on September 5, 1979, underauthority of the "96-hour hold" provision ofGeneral Statutes 17-38a (e)[3], which permitssummary seizure if the commissioner has probablecause to believe that a child is "suffering fromserious physical illness or serious physicalinjury or is in immediate physical danger from hissurroundings, and that immediate removal from suchsurroundings is necessary to insure the child'ssafety . . . ." (Emphasis added.)

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On September 7, 1979, in the Juvenile Court forNew Haven, DCYS filed petitions of neglect

underGeneral Statutes 46b-129 (a)[4] for each of thedefendant's children. Accompanying each petitionwas an affidavit for orders of temporary custodyasking that the court issue temporary ex parteorders to keep the five children in DCYS custodyunder authority of 46b-129 (b)(2).[5] The petitionsalleged, in addition to Christopher's unexplained

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death, that the defendant's apartment wasdirty, that numerous roaches could be found there,that beer cans were to be found in the apartment,that the defendant had been observed drinkingbeer, that on one occasion the defendant may havebeen drunk, that a neighbor reported that thechildren once had been left alone all night,[6]and that the two older children hadoccasionally come to school without having eatenbreakfast. On the basis of these allegations, onSeptember 7, 1979, the court granted, ex parte,temporary custody to the commissioner pending anoticed hearing on temporary custody set forSeptember 14, 1979, within ten days of the exparte order as required by 46b-129 (b)(2). Thecourt also set October 1, 1979, for a hearing onthe neglect petitions.[7]

At the September 14 temporary custody hearing,DCYS presented testimony of Spicknall confirmingand elaborating on the conditions of the defendant'shome and on the defendant's beer drinking.Christopher's pediatrician testified concerning

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Christopher's treatment and physical appearancewhen the child was brought to the hospital onSeptember 5. The doctor also testified that,although the pathologist's report on the autopsywas not complete,[8] the external marks onChristopher's body were not a cause of death, thatno internal injuries were found, and that thechild had had a viral lung infection. He alsoexplained, on cross-examination, the term "suddeninfant death syndrome" and its pathology. At theconclusion of the state's case, the court found"probable cause" and ordered temporary custody ofthe children to remain with the plaintiffcommissioner of children and youth services.[9]

The defendant appealed to this court claimingthat General Statutes 46b-129 (b)[10] violatesthe due process clause of the fourteenth amendmentboth because it is an impermissible infringementon her right to family integrity, and because thestatute is unconstitutionally vague. The defendant

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also claims error in the trial court'sdetermination that "probable cause" is thestandard of proof in a temporary custodyproceeding. We conclude that 46b-129 (b) isconstitutional; however, we do find that the trialcourt erred when it decided that "probablecause"is the standard of proof in a temporarycustody proceeding.

As hereinafter set forth, we hold: (1) that46b-129 (b) is constitutional because it must beread together with 17-38a which contains adequatecriteria for determining whether temporary custodyof children may be taken from the parent by courtorder; and (2) that the standard of proofapplicable to temporary custody proceedingspursuant to 46b-129 (b) is a fair preponderance ofthe evidence.

I

CONSTITUTIONALITY OF GENERAL STATUTES 46b-129 (b) A FAMILY INTEGRITY

The Connecticut legislature has declared: "Thepublic policy of this state is: To protectchildren whose health and welfare may be adverselyaffected through injury and neglect; to strengthenthe family and to make the home safe for childrenby enhancing the parental capacity for good childcare; to provide a temporary or permanent nurturingand safe environment for children whennecessary; and for these purposes to require thereporting of suspected child abuse, investigationof such reports by a social agency, and provisionof services, where needed, to such child andfamily." General Statutes 17-38a (a).

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In administering this policy, courts> and stateagencies must keep in mind the constitutionallimitations imposed on a state which undertakes anyform of coercive intervention in family affairs.The United States Supreme Court has frequentlyemphasized the constitutional importance of familyintegrity. "The rights to conceive and to raiseone's children have been deemed `essential,'`basic civil rights of man,' and `[r]ights farmore precious . . . than property rights' `It iscardinal with us that the custody, care and nurtureof the child reside first in the parents, whoseprimary function and freedom include preparation forobligations the state can neither supply norhinder' The integrity of the family unit hasfound protection in the Due Process Clause of theFourteenth Amendment, the Equal Protection Clauseof the Fourteenth Amendment, and the NinthAmendment." (Citations omitted.) Stanley v.Illinois, 405 U.S. 645, 651, 92 S.Ct. 1208, 31L.Ed.2d 551 (1972). It must be stressed, however,that the right to family integrity is not a rightof the parents alone, but "encompasses thereciprocal rights of both parents and children. Itis the interest of the parent in the `companionship,care, custody and management of his or herchildren,' Stanley v. Illinois, [supra], and ofthe children in not being dislocated from the`emotional attachments that derive from theintimacy of daily association,' with the parent,[Smith v.] Organization of Foster Families [forEquality and Reform, 431 U.S. 816, 844, 97 S.Ct.2094, 53 L.Ed.2d 14 (1977)]." Duchesne v.Sugarman, 566 F.2d 817, 825 (2d Cir. 1977). Thisright to family integrity includes "the mostessential and basic aspect of familial privacy - theright of the family to remain together without thecoercive interference of the awesome power of thestate." Duchesne v. Sugarman, supra.

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B

CRITERIA FOR COERCIVE INTERVENTION BY THE STATE

Where fundamental rights are concerned we havea two-part test: "[1] regulations limiting theserights may be justified only by a `compellingstate interest,' and . . . [2] legislativeenactments must be narrowly drawn to express onlythe legitimate state interests at stake." Roe v.Wade, 410 U.S. 113, 155, 93 S.Ct. 705, 35 L.Ed.2d147 (1973). The state has a substantial interestin protecting minor children; Stanley v. Illinois,supra, 649; Prince v. Massachusetts, 321 U.S. 158,166, 64 S.Ct. 438, 88 L.Ed. 645 (1944);intervention in family matters by the state isjustified, however, only when such intervention isactually "in the best interests of the child," astandard long used in this state. See GeneralStatutes 17-43a, 46b-129 (e); State v. Anonymous,179 Conn. 155, 165, 425 A.2d 939 (1979); In reJuvenile Appeal (Anonymous), 177 Conn. 648, 661-62,420 A.2d 875 (1979).

Studies indicate that the best interests of thechild are usually served by keeping the child inthe home with his or her parents. "Virtually allexperts, from many different professional disciplines,agree that children need and benefit fromcontinuous, stable home environments." Instituteof Judicial Administration - American Bar Association,Juvenile Justice Standards Project,Standards Relating to Abuse and Neglect, p. 45(Tentative draft, 1977) (IJA-ABA, STDS). The loveand attention not only of parents, but also ofsiblings, which is available in the homeenvironment, cannot be provided by the state.Unfortunately, an order of temporary custody oftenresults in the children of one family beingseparated and scattered to different

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foster homes with little opportunity to seeeach other. Even where the parent-child relationship is "marginal," it is usually in the bestinterests of the child to remain at home and stillbenefit from a family environment.[11]

The defendants' challenge to the temporary custodystatute, 46b-129 (b), must be addressed inlight of the foregoing considerations. The defendantcontends that only when the child is "at riskof harm" does the state's interest become a compellingone, justifying even temporary removal ofthe child from the home. We agree.

In custody proceedings, any criteria used todetermine when intervention is permissible musttake into account the competing interests involved.

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The parent has only one interest, that of familyintegrity; Stanley v. Illinois, supra, 651; andthe state has only one compelling interest, thatof protecting minor children. Lassiter v.Department of Social

Services, 452 U.S. 18, 27,101 S.Ct. 2153, 68 L.Ed.2d 640 (1981); Sims v.State Department of Public Welfare, 438 F. Sup. 1179,1191 (S.D.Tex. 1977), rev'd on other groundssub nom. Moore v. Sims, 442 U.S. 415, 99 S.Ct. 2371,60 L.Ed.2d 994 (1979). The child, however, has twodistinct and often contradictory interests. Thefirst is a basic interest in safety; the secondis the important interest, discussed above, inhaving a stable family environment. Connecticut'schild welfare statutes recognize both the conflictinginterests and the constitutional limitations involvedin any intervention situation. Thus, under the criteriaof General Statutes 17-38a (e), summary assumption oftemporary custody is authorized only when there isprobable cause to believe that "the child issuffering from serious physical illness or seriousphysical injury or is in immediate physical dangerfrom his surroundings, and that immediate removalfrom such surroundings is necessary to insure thechild's safety . . . ." (Emphasis added.)

The language of 17-38a (e) clearly limits thescope of intervention to cases where the stateinterest is compelling, as required by the firstpart of the test from Roe v. Wade, supra.Intervention is permitted only where "seriousphysical illness or serious physical injury" isfound or where "immediate physical danger" ispresent. It is at this point that the child'sinterest no longer coincides with that of theparent, thereby diminishing the magnitude of theparent's right to family integrity; In re AngeliaP., 28 Cal.3d 908, 916-17, 623 P.2d 198 (1981);

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and therefore the state's intervention as parenspatriae to protect the child becomes so necessarythat it can be considered paramount. Alsager v.District Court, 406 F. Sup. 10, 22-23 (S.D.Iowa1975). A determination that the state interestis compelling does not alone affirm theconstitutionality of the statute. More is needed.The second part of the due process analysis of Roev. Wade, supra, requires that statutes affectingfundamental rights be "narrowly drawn to expressonly the legitimate state interests at stake."General Statutes 17-38a (e) meets this part of thetest by requiring, in addition to the compellingneed to protect the child, that the assumption oftemporary custody by the commissioner beimmediately "necessary to insure the child'ssafety." This phrase requires that various stepsshort of removal from the home be used whenpossible in preference to disturbing the integrityof the family. The statute itself mentionssupervised in-home custody, but a wide range ofother programs short of removal are a part ofexisting DCYS procedure. See DCYS: Programs andPriorities, FY 1979.

The challenged statute, 46b-129 (b), does notcontain the "serious physical illness or seriousphysical injury" or "immediate physical danger"language of 17-38a (e). We note, however, that46b-129 (b) does limit the temporary custody orderto those situations in which "the child or youth'scondition or the circumstances surrounding his carerequire that his custody be immediately assumed tosafeguard his welfare." It is axiomatic that statuteson a particular subject be "considered as a whole,with a view toward reconciling their separateparts in order to render a reasonable overallinterpretation . . . . We must avoid a consequence

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which fails to attain a rational andsensible result which bears most directly on theobject which the legislature sought to obtain."LaProvidenza v. State Employees' RetirementCommission, 178 Conn. 23, 29, 420 A.2d 905 (1979);see United Aircraft Corporation v. Fusari,163 Conn. 401, 414, 311 A.2d 65 (1972). This is noless true when the legislature has chosen to placerelated laws in different parts of the GeneralStatutes. Therefore, the language limitingcoercive intervention in chapter 301 ("ChildWelfare"), 17-38a, must be read as applyingequally to such intervention in chapter 815t("[Family Law] Juvenile Matters"), 46b-129.Because we hold that General Statutes 46b-129 (b)may be applied only on the basis of the criteriaenunciated in 17-38a, we reject the defendant'sclaim that 46b-129 (b) is unconstitutional.[12]

In the instant case, no substantial showing wasmade at the temporary custody hearing that thedefendant's five children were suffering from either

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serious physical illness or serious physicalinjury, or that they would be in immediatephysical danger if they were returned to thedefendant's home. The DCYS caseworker admitted attrial, as did the state's counsel at argumentbefore this court, that without the unexplaineddeath of Christopher there was no reason for DCYSto have custody of the other children. The medicalevidence at the hearing indicated no connectionbetween Christopher's death and either thedefendant or the conditions in her home. While thefinal autopsy report was not available at thehearing, the pediatrician testified that the markson Christopher's body were not related to thechild's death. There was, therefore, no evidencebefore the court to indicate whether his death wasfrom natural causes or was the result of abuse.Yet with nothing before it but subjectivesuspicion, the court granted the commissionercustody of the defendant's other children. It was

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error for the court to grant to the commissionertemporary custody when no immediate risk of dangerto the children was shown.

It appears from this record that DCYS has notheeded the suggestion of this court that theagency bears a responsibility of continuing reviewof cases it is litigating. In In re JuvenileAppeal (Anonymous), 177 Conn. 648, 662,420 A.2d 875 (1979), we stated that when the cause for thecommitment of children to DCYS custody ends, thestate bears the burden of showing the necessity tocontinue the commitment. Although that holdingconcerned a parent's petition for revocation of acommitment, implicit in our holding was that thestate had a duty to seek the best interests of thechild even after adversary proceedings with theparent had begun. In this case, at some timeshortly after the orders of temporary custody weregranted, the state received the final

autopsyreport which effectively exonerated the defendantfrom any wrongdoing in Christopher's death. Thereason for the custody order then no longerexisted. It was then incumbent on DCYS to reunitethe family. "In this situation, the state cannotconstitutionally `sit back and wait' for theparent to institute judicial proceedings. It`cannot . . . [adopt] for itself an attitude of"if you don't like it, sue."'" Duchesne v.Sugarman, 566 F.2d 817, 828 (2d Cir. 1977).[13]

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Petitions for neglect and for temporary custodyorders, like the petitions to terminate parentalrights in Duchesne v. Sugarman, supra, or in In reJuvenile Appeal (Anonymous), supra, "are particularlyvulnerable to the risk that judges or social workerswill be tempted, consciously or unconsciously, tocompare unfavorably the material advantages of thechild's natural parents with those of prospectiveadoptive parents [or foster parents]." In reJuvenile Appeal (Anonymous), supra, 672.

This case clearly shows that these dangers doexist. It is shocking that the defendant'schildren have been in "temporary" custody for morethan three years. This is a tragic and deplorablesituation, and DCYS must bear full responsibilityfor this unwarranted and inexcusable delay. Toooften the courts> of this state are faced with asituation where, as here, litigation has continuedfor years while the children, whose interests aresupposed to be paramount, suffer in the insecurityof "temporary" placements. The well-knowndeleterious effects of prolonged temporaryplacement on the child, which we have discussedabove, makes continuing review by DCYS of alltemporary custody and commitment cases imperative.Where appropriate, the agency can and must takeunilateral action either to reunite families or toterminate parental rights as expeditiously aspossible to free neglected children for placementand adoption in stable family settings.

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The failure of DCYS properly to administer 46b-129does not, however, affect its constitutionality.The statute is constitutional becausewhen it is read together with 17-38a, as it mustbe, it is justified by a compelling state interestand is narrowly drawn to express only thatlegitimate state interest. Roe v. Wade, supra.

II

BURDEN OF PROOF; STANDARD OF PROOF

The defendant's children were initially removedfrom her custody pursuant to the ninety-six hourhold provision of General Statutes 17-38a (e). Asexplained above, this statute allows thecommissioner of children and youth servicesto remove a child temporarily from the home,without court order, if the commissioner hasprobable cause to believe that the child issuffering from serious physical illness

orphysical injury, or is in immediate physicaldanger. The plaintiff commissioner promptlyfiled petitions of neglect with the SuperiorCourt under General Statutes 46b-129 (b),accompanied by a request for an ex parte orderthat the commissioner could retain custody pendingan adversary hearing on temporary custody. 46b-129(b)(2). Section 46b-129 (b) provides for courtordered temporary custody in either of two waysafter a neglect petition is filed. Under subsection(1) of 46b-129 (b), the court may issue to theparents an order to show cause why the court shouldnot vest custody in the commissioner. [14] Under

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subsection (2), used in this case, if the court has"reasonable cause to find" that "the circumstancessurrounding [the child's] care require that hiscustody be immediately assumed to safeguardhis welfare . . ." the court may issue atemporary custody order ex parte, "pending ahearing upon the petition [for temporary custody]which shall be held within ten days. . . ." Thisprocedure is in two steps: first, upon a"reasonable cause" finding, the court may issue anex parte temporary custody order of no more thanten days duration; and, second, a noticedtemporary custody hearing must be held within tendays to determine whether the ex parte ordershould be confirmed.

In this case, the unexplained death of Christopher,combined with the marks on his body, wassufficient to support a finding under 17-38a (e)that there was probable cause to believe that thedefendant's other children might be "in immediatephysical danger," as required for removal fromthe home under the standards enunciated earlier inthis opinion. Therefore, both the initial seizureby DCYS under the ninety-six hour hold provision of17-38a (e), and the court's decision to issue anex parte temporary custody order under the firststep of 46b-129 (b)(2) on September 7, 1979, wereentirely proper. Neither of these actions ischallenged here.

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The court below erred, however, at the secondstep of 46b-129 (b)(2) when it confirmed itsorder of temporary custody after taking evidenceat the temporary custody hearing on September 14,1979, and October 1, 1979. On the basis oftestimony heard on those two days, the court found"probable cause" to continue custody in thecommissioner, and concluded that the defendant'schildren were "presumptively neglected anduncared-for children whose return to parentalcare would not adequately assure their well beingprior to an adjudication on the merits of thepetitions alleging their neglect." The defendantclaims that the court erred by presumingneglect and by requiring "probable cause"as the burden of proof, thereby effectivelyshifting the burden of proof to the defendant. Weagree. We hold that the burden of proof is alwayson the state when it seeks to remove children fromthe home. We hold further that the standard ofproof to be used in temporary custody hearingsunder General Statutes 46b-129 (b)(2) is thenormal civil standard of a fair preponderance ofthe evidence.

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A

BURDEN OF PROOF

We noted above that it is both a fundamentalright and the policy of this state to maintain theintegrity of the family. Where a fundamental rightis involved, the burden of proof is always on theparty seeking to interfere with that right. In reJuvenile Appeal (Anonymous), 177 Conn. 648, 662,420 A.2d 875 (1979). The trial court's conclusionthat the children were "presumptively neglected"impermissibly shifted to the defendant the burdenof proof to show that the children were notneglected, and was, therefore, error.

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B

STANDARD OF PROOF

General Statutes 46b-129 (b) establishes areasonable cause standard of proof for the issuanceof ex parte orders of temporary custody, but doesnot prescribe the standard of proof required inthe second stage of proceedings under thatsection, when an adversary evidentiary temporarycustody hearing is held. Where no standard ofproof is provided in a statute, due processrequires that the court apply a standard which isappropriate to the issues involved.

In Santosky v. Kramer, 5 U.S. 745, 102 S.Ct.1388, 71 L.Ed.2d 599 (1982), the United StatesSupreme Court held that in hearings on petitionsto terminate parental rights, due process requiresthat the state prove statutory terminationcriteria by "clear and convincing evidence" ratherthan by the normal civil standard of a "fairpreponderance of the evidence." Santosky v.Kramer, supra, 769-70. The defendant urges us toadopt the same higher standard of proof forhearings on temporary custody, while the statesuggests that the court below was correct inapplying a "probable cause" standard. We rejectboth suggestions and hold that the proper standardof proof in temporary custody hearings is thenormal civil standard of a fair preponderance ofthe evidence. See Darrow v. Fleischner, 117 Conn. 518,519-20, 169 A. 197 (1933). The party seekinga change in custody, in this case the state, mustprove by a fair preponderance of the evidence thatcustody should be taken from the parent and vestedin the commissioner on a temporary basis under thecriteria established in 46b-129 (b).

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Despite the Supreme Court determination inSantosky, supra, that parental termination hearingsrequire the higher standard, we reject the"clear and convincing evidence" standard for temporarycustody hearings because: (1) the natureof the private interests concerned in the twokinds of hearings differs, and (2) the deprivationof rights in a temporary custody adjudication isneither

final nor irrevocable.

"`The extent to which procedural due processmust be afforded the recipient is influenced bythe extent to which he [or she] may be "condemnedto suffer grievous loss."' [Citation Omitted.]Whether the loss threatened by a particular typeof proceeding is sufficiently grave to warrantmore than average certainty on the part of thefactfinder turns on both the nature of the privateinterest threatened and the permanency of thethreatened loss." Santosky v. Kramer, supra, 758."[T]he minimum standard of proof tolerated by thedue process requirement reflects not only theweight of the private and public interests affected,but also a societal judgment about how the risk oferror should be distributed. . . ." Id., 755.

1. Private Interests

In the termination of parental rights hearingdiscussed in Santosky, the United States SupremeCourt emphasized that only the fundamental familyintegrity interest of the parent was at stake."The factfinding [hearing] does not purport - and isnot intended - to balance the child's interest in anormal family home against the parents' interestin raising the child. . . . Rather, thefactfinding hearing pits the State directlyagainst the parents." Santosky v. Kramer,

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supra, 759. In a hearing on temporarycustody, however, the child's interests are verymuch at issue. We hold today that no temporarycustody order may issue unless the child issuffering from serious physical illness or seriousphysical injury or is in immediate physicaldanger. We also hold that the child's safetypending further proceedings is the primary concernof a temporary custody hearing. Therefore, thereare two competing interests - the safety of thechild and the parent's right of family integritystake in a temporary custody hearing, whereasonly the parent's family integrity interest isdirectly involved in the fault stage of atermination of parental rights proceeding likethat in Santosky. The child, of course, has aninterest both in safety and in family integrity.The state, as parens patriae, represents thesafety interest of the child in custodyproceedings. This interest must be balancedagainst the combined family integrity interests ofparent and child, which are represented by theparent. An elevated standard of proof cannotprotect the child's interests, because someinterest of the child is adversely affectedwhether the state or the parent prevails. Thechild's interests are best protected not by anelevated standard of proof, but by the "risk ofharm" standards enunciated today.

Where two important interests affected by aproceeding are in relative equipoise, as theyare in this situation, a higher standard of proofwould necessarily indicate a preference for protectionof one interest over the other. See In Re Winship,397 U.S. 358, 371, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970)(Harlan, J., concurring). We see no reason to make sucha value determination, and find that the variousinterests in a temporary custody hearing

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are best served by applying the normal civilstandard of proof which is a fair preponderance ofthe evidence.

2. Permanency of Deprivation of Rights

The fair preponderance of the evidence standardis also appropriate in 46b-129 (b) hearingsbecause of the temporary nature of the orderscontemplated by these proceedings. In Santosky v.Kramer, supra, 759, the court emphasized that anelevated standard of proof was required becausethe "decision terminating parent rights is finaland irrevocable." (Emphasis in original.) Adecision granting temporary custody to thecommissioner of children and youth servicescertainly affects important rights of the parentand the child, as explained in part I of ouropinion. The decision, however, is neither finalnor irrevocable. The determination is necessarilyreviewed during the hearings on the neglectpetition under 46b-129 (a) and (c),[15] It isalso reviewable upon a petition for revocation ofcustody filed, inter alia, by the parent or byDCYS under 46b-129 (g);[16] and, therefore, the

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deprivation of the parent's right to care andcustody of his or her children is much less seriousin a temporary custody hearing than in theSantosky termination of parental rightsproceeding.

In conclusion, we hold that the fair preponderanceof the evidence standard of proof must beapplied in temporary custody proceedings, bothbecause the private interests involved arerelatively balanced between the safety of thechild and the combined family integrity interestsof parent and child, and also because anydeprivation of rights is both temporary andreviewable.

There is error, and the case is remanded withdirection to set aside the orders of temporarycustody.

In this opinion PETERS, PARSKEY and GRILLO, Js., concurred.

1. A protective services family is onewhich has come to the attention of DCYS as having apotential for abuse, neglect, abandonment, orsexual exploitation. DCYS then investigates thefamily and, where appropriate, provides "supportsystems to bolster family functioning." DCYS:Programs and Priorities, FY 1979.

2. Aid to Families with Dependent Children isa federal-state grant-in-aid program authorized by42 U.S.C. § 601 et seq. and administered pursuant toGeneral Statutes 17-85 through 17-107.

3. General Statutes 17-38a (e) provides:"Agencies or institutions receiving reports ofchild abuse as provided in this section shall,within twenty-four hours, transfer suchinformation to the commissioner of children andyouth services or his agent, who shall cause thereport to be investigated immediately. If theinvestigation produces evidence that the child hasbeen

abused in the manner described in subsection(b), he shall take such measures as he deemsnecessary to protect the child, and any otherchildren similarly situated, including but notlimited to the removal of the child or childrenfrom his home with the consent of his or theirparents or guardian or by order of the superiorcourt. If the commissioner of children andyouth services or his designee, after suchinvestigation, has probable cause to believe thatthe child is suffering from serious physicalillness or serious physical injury or is inimmediate physical danger from his surroundings,and that immediate removal from such surroundingsis necessary to insure the child's safety, thecommissioner, or his designee, may authorize anyemployee of his department or any law enforcementofficer to remove the child from such surroundingswithout the consent of the child's parent orguardian. Such removal and temporary custody shallnot exceed ninety-six hours during which timeeither a petition shall be filed with the superiorcourt or the child shall be returned to his parentor guardian. If the commissioner determines thatthere are grounds to believe the child may beproperly cared for in his own home, the parents orguardian, as the case may be, shall be aided togive such proper care under the supervision of thecommissioner. Such supervised custody may beterminated when the commissioner .finds a safeenvironment has been provided the child; but ifthe commissioner, after a reasonable time, findsthis condition cannot be achieved in the child'sown home under such supervision, he may petitionthe superior court for commitment of the child."

4. General Statutes 46b-129 (a) provides: "Anyselectman, town manager, or town, city, or boroughwelfare department, any probation officer, theConnecticut Humane Society, or the commissioner ofhuman resources, the commissioner of children andyouth services or any child-caring institution oragency approved by the commissioner of childrenand youth services, a child or his representativeor attorney or a foster parent of a child, havinginformation that a child or youth is neglected,uncared-for or dependent, may file with thesuperior court which has venue over such matter averified petition plainly stating such facts asbring the child or youth within the jurisdictionof the court as neglected, uncared-for, ordependent, within the meaning of section 46b-120,the name, date of birth, sex, and residence of thechild or youth, the name and residence of hisparents or guardian, and praying for appropriateaction by the court in conformity with theprovisions of this chapter. Upon the filing ofsuch a petition, the court shall cause a summonsto be issued requiring the parent or parents orthe guardian of the child or youth to appear incourt at the time and place named, which summonsshall be served not less than fourteen days beforethe date of the hearing in the manner prescribedby section 51-309, and said court shall furthergive notice to the petitioner and to thecommissioner of children and youth services of thetime and place when the petition is to be heardnot less than fourteen days next preceding thehearing in question."

5. General Statutes 46b-129 (b) provides: "Ifit appears from the allegations of the petitionand other verified affirmations of factaccompanying the petition, or subsequent thereto,that there is reasonable cause to find that thechild's or youth's condition or the circumstancessurrounding his care require that his custody beimmediately assumed to safeguard his welfare, thecourt shall either (1) issue an order to theparents or other person having responsibility forthe care of the child or youth to show cause atsuch time as the court may designate why the courtshall not vest in some suitable agency or personthe child's or youth's temporary care and custodypending a hearing on the petition, or (2) vest insome suitable agency or person the child's or youth'stemporary care and custody pending a hearing uponthe petition which shall be held within ten daysfrom the issuance of such order on the need forsuch temporary care and custody. The service ofsuch orders may be made by any officer authorizedby law to serve process, or by any probationofficer appointed in accordance with section46b-123, investigator from the department ofadministrative services, state police officer orindifferent person. The expense for any temporarycare and custody shall be paid by the town inwhich such child or youth is at the time

residing,and such town shall be reimbursed therefor by thetown found liable for his support, except thatwhere a state agency has filed a petition pursuantto the provisions of subsection (a) of thissection, the agency shall pay such expense."

6. The report was allegedly made by anupstairs neighbor of the defendant. At thehearing, the neighbor denied having made such areport at any time.

7. The hearing on the neglect petitions wascontinued when additional evidence on thetemporary custody petitions was heard on October1, 1979. It was never rescheduled.

8. The final autopsy report was not completeat the time of the hearing. Preliminary findingswere available, however, and the cause of deathcould not be determined. No evidence available atthe hearing connected the death with any sort ofneglect or abuse.

9. The court stated after the state's firstwitness: "I think I have enough to make adetermination. The court should have available toit that which is sufficient to make a probablecause determination for purposes of orders today." Additional testimony was taken for purposes ofthe temporary custody order on October 5, 1979,and October 23, 1979, from witnesses called by thedefendant, some of whom contradicted the factsalleged in the neglect petitions. The court then"affirmed" its earlier temporary custody order,and denied the defendant's motion to dismiss thepetitions and the order of temporary custody.

10. The defendant also attacks thedefinition of "neglect" in 46b-120 as beingunconstitutionally vague. This appeal, however, isfrom a temporary custody order issued pursuant to46b-129 (b); it is not an appeal of a neglectproceeding. We therefore do not address the"neglect" issue; 46b-120; because it is notproperly before us.

11. Uninterrupted home life "comports . . . witheach child's biological and psychological need forunthreatened and unbroken continuity of care byhis parents. No other animal is for so long a timeafter birth in so helpless a state that itssurvival depends upon continuous nurture by anadult. Although breaking or weakening the ties tothe responsible and responsive adults may havedifferent consequences for children of differentages, there is little doubt that such breaches inthe familial bond will be detrimental to a child'swell-being." (Footnotes omitted.) Goldstein,"Medical Care for the Child at Risk: On StateSupervision of Parental Autonomy," 86 Yale L.J.645, 649 (1977). Separation from his or herparents for any significant time has damagingeffects on a child, even when the parents areminimally supportive of the child's needs. SeeGoldstein, Freud and Solnit, Before the BestInterests of the Child, pp. 6-12 (1979); Wald,"State Intervention on Behalf of `Neglected'Children: Standards for Removal of Children fromTheir Homes, Monitoring the Status of Children inFoster Care, and Termination of Parental Rights,"28 Stan. L. Rev. 623 (1976); Goldstein, Freud andSolnit, Beyond the Best Interests of the Child, p.20 (1973). "Even when placed in good environments,which is often not the case, they suffer anxietyand depression from being separated from theirparents, they are forced to deal with newcaretakers, playmates, school teachers, etc. As aresult they often suffer emotional damage andtheir development is delayed." Wald, "ThinkingAbout Public Policy Toward Abuse and Neglect ofChildren," 78 Mich. L. Rev. 645, 662 (1980).

12. The American Bar Association JuvenileJustice Standards Project, after a thorough studyof the competing individual, societal, and legalinterests involved when state intervention intofamily affairs is contemplated, developed

modelStandards Relating to Abuse and Neglect (TentativeDraft, 1977) (IJA-ABA, STDS). The basic policyassumptions underlying the study mirror our ownlaw, i.e., "[s]tate intervention should promotefamily autonomy and family life. . . . [But] wherea child's needs . . . conflict with his/herparents' interests, the child's needs should havepriority." ABA Standard 1.5. When interpreting the"at risk" criteria set forth in General Statutes17-38a (e), the following guidelines may be consideredinsofar as they help to define moreclearly our own statutes pertaining to temporarycustody orders: " should . . . assume jurisdiction inorder to condition continued parental custody uponthe parents' accepting supervision or to remove achild from his/her home only when a child isendangered in a manner specified in subsection A. - F.: "A. a child has suffered, or there is asubstantial risk that a child will imminentlysuffer, a physical harm, inflicted nonaccidentallyupon him/her by his/her parents, which causes, orcreates a substantial risk of causingdisfigurement, impairment of bodily functioning,or other serious physical injury; "B. a child has suffered, or there is asubstantial risk that the child will imminentlysuffer, physical harm causing disfigurement,impairment of bodily functioning, or other seriousphysical injury as a result of conditions createdby his/her parents or by the failure of theparents to adequately supervise or protecthim/her; "C. a child is suffering serious emotionaldamage, evidenced by severe anxiety, depression,or withdrawal, or untoward aggressive behaviortoward self or others, and the child's parents arenot willing to provide treatment for him/her; "D. a child has been sexually abused by his/herparent or a member of his/her household . . .; "E. a child is in need of medical treatment tocure, alleviate, or prevent him/her from sufferingserious physical harm which may result in death,disfigurement, or substantial impairment of bodilyfunctions, and his/her parents are unwilling toprovide or consent to the medical treatment; "F. a child is committing delinquent acts as aresult of parental encouragement, guidance, orapproval." ABA Standard 2.1.

13. We recognize that there are three partiesto litigation in the Superior Court for juvenilematters-DCYS, the parent, and the child (through aguardian ad litem appointed pursuant to PracticeBook 484) and that any of these parties could havemoved to terminate this litigation in a number ofways. We are saying only that DCYS, acting asparens patriae, had a duty to do so. This court notes, however, that the defendantmother took no steps either to revoke custodyunder General Statutes 46b-129 (f) or to pursue ajudicial resolution of the neglect petitions. Weare even more concerned that the attorney for thechildren took no steps to protect their interestsin family integrity by insisting on a resolutionof the neglect petitions, and failed to representtheir interests before this court. This court,therefore, is appreciative of the fact that theinterests of the children have been ablyrepresented by the Connecticut Civil LibertiesUnion as amicus curiae on this appeal.

14. Although 46b-129 (b)(1) was not used here,and is not challenged here, our discussion of thetemporary custody statute would be incomplete ifwe did not make clear that the burden of proof atthe order to show cause hearing remains on thestate. As discussed in detail in our opinion,where the state seeks to obtain custody ofchildren, the fundamental right to familyintegrity is at stake, and the burden of proofremains on the party challenging that right.This is so even though the procedures in thestatute involve issuing the parents an orderto show cause. Merely by appearing in responseto the order to show cause, the parent invokesthe presumption in favor of maintaining thefamily intact. See In re Juvenile Appeal(Anonymous), 177 Conn. 648, 663-64, 420 A.2d 875 (1979).

15. General Statutes 46b-129 (c) provides:"When a petition is filed in said court for thecommitment of a child or youth, the commissionerof children and youth services shall make athorough investigation of the case and shallcause to be made a thorough physical and mentalexamination of the child or youth if requested bythe court. The court after hearing on the

petitionand upon a finding that the physical or mentalability of a parent or guardian to care for thechild or youth before the court is at issue mayorder a thorough physical or mental examination,or both, of the parent or guardian whosecompetency is in question. The expenses incurredin making such physical and mental examinationsshall be paid as costs of commitment are paid."

16. General Statutes 46b-129 (g) provides:"Any court by which a child or youth has beencommitted pursuant to the provisions of thissection may, upon the application of a parent,including any person who acknowledges before saidcourt paternity of a child or youth born out ofwedlock, or other relative of such child or youth,the selectman or any original petitioner, or alicensed childcaring agency or institution approvedby the commissioner, or said commissioner, andwhile such child or youth is under the guardianship.of said commissioner, upon hearing, afterreasonable notice to said commissioner, and, ifsaid commissioner made the application, afterreasonable notice to such parent, relative,original petitioner, selectman or child caringagency or institution, upon finding that cause forcommitment no longer exists, revoke suchcommitment, and thereupon such guardianship andall control of said commissioner over such childor youth shall terminate. The court may furtherrevoke the commitment of any child or youth uponapplication by the commissioner or by the child oryouth concerned and after reasonable notice to theparties affected upon a finding that suchrevocation will be for the best interest andwelfare of such child or youth. No hearing shallbe held for such reopening and termination ofcommitment or transfer of commitment more oftenthan once in six months, except upon theapplication of said commissioner." We reiterate that it is the continuing duty ofDCYS to review the custody situation and topetition the court to return custody to the parentif and when the original reasons for the change incustody no longer exist. See footnote 11, supra.Page 301

17. General Statutes 46b-120 defines the terms"neglected," "uncared for," and "dependent" as follows: "[A] child or youth may be found `neglected' who (i) hasbeen abandoned or (ii) is being denied proper care andattention, physically, educationally, emotionally ormorally or (iii) is being permitted to live under conditions,Circumstances or associations injurious to his well-being,or (iv) has been abused . . . . "[A] child or youth may be found `uncared for'who is homeless or whose home cannot provide thespecialized care which his physical, emotional ormental condition requires. "[A] child or youth may be found `dependent'whose home is a suitable one for him, save for thefinancial inability of his parents, parent,guardian or other person maintaining such home, toprovide the specialized care his condition requires."